

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIREMAN'S FUND INSURANCE COMPANY,)
ONE BEACON INSURANCE COMPANY,)
NATIONAL LIABILITY AND FIRE)
INSURANCE COMPANY and QBE)
MARINE & ENERGY SYNDICATE 1036,)

Plaintiffs,

v.) 10-civ-1653 (LAK)

GREAT AMERICAN INSURANCE COMPANY)
OF NEW YORK, MAX SPECIALTY)
INSURANCE COMPANY and SIGNAL)
INTERNATIONAL, L.L.C.)

Defendants.

DEPOSITION UPON ORAL EXAMINATION OF

JAMES FRANCIS MORANO, III

TAKEN ON BEHALF OF DEFENDANT SIGNAL INTERNATIONAL, LLC

Richmond, Virginia

Wednesday, June 29, 2011

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2

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Also Present:

36

37 Chris Cunningham, Signal International

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11 JAMES FRANCIS MORANO, III was sworn and
12 deposed on behalf of the Defendant Signal International,
13 L.L.C. as follows:

14

15

EXAMINATION

16 BY MR. BLAND:

17 Q. Mr. Morano, I'm Dave Bland. I represent
18 Signal International in connection with this lawsuit.

19 We're here today to take your deposition
20 regarding the lawsuit, the allegations in the lawsuit,
21 the property insurance policy and other matters.

22 Should I ask you any questions during the
23 deposition that you don't understand, just tell me,
24 okay?

25 A. Okay.

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1 Q. If you answer my question without telling me
2 that you don't understand it, I'll assume from your
3 answer that you understood it, okay?

4 A. Okay.

5 Q. If you need to take a break, just tell us,
6 we'll take a break.

7 A. Um-hum.

8 Q. Would you state your full name for the record?

9 A. Full name is James Francis Morano, III.

10 MR. BLAND: And I take it we're taking the
11 deposition pursuant to the same rules and
12 guidelines we've been taking the other ones in? Is
13 that okay?

14 MR. NICOLETTI: Is that the standard
15 stipulations?

16 MR. BLAND: Yes.

17 MR. NICOLETTI: All objections except as to
18 form are reserved for trial. He can sign, read --
19 he can sign before any notary and -- do you want to
20 read?

21 MR. BLAND: Yes.

22 MR. NICOLETTI: Larry, does your client want
23 to read the transcript?

24 MR. BOWLES: Yes.

25 MR. NICOLETTI: Okay.

1 BY MR. BLAND:

2 Q. You have the right to read and sign your
3 deposition when it comes back and it's in a transcribed
4 form. I'll leave that to you and your counsel as to
5 that.

6 Where do you live?

7 A. I live at 362 Albemarle Avenue in Richmond,
8 Virginia.

9 Q. And where do you work?

10 A. I work for Alterra Excess and Surplus
11 Insurance Company.

12 Q. How long have you worked at Alterra?

13 A. Alterra, we've been Alterra for just over a
14 year now.

15 Prior to that, it was Max Specialty Insurance
16 Company. I have been there since October of 2007.

17 Q. So Max essentially is the same thing as
18 Alterra. If we say "Alterra," that also means Max
19 Specialty?

20 A. Correct. We went through a merger with
21 Harbour Point last year and changed the name to Alterra.

22

23 Q. Okay. What is your educational background?

24 A. I was a political science major at James
25 Madison University. After that, I started working in

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1 well?

2 A. Yes.

3 Q. Both excess and primary?

4 A. Yes.

5 Q. And when you were at Risk Placement Services,
6 what types of policies were you a wholesale broker for?

7 A. Entirely surplus lines, property.

8 Q. And what about at McAuley Woods?

9 A. Property and casualty.

10 Q. Have you ever been involved in your career in
11 writing a marine insurance policy?

12 A. Not a true marine policy. Builder's risks,
13 yes, other excess policies on shipbuilders or ship
14 repair, yes, but that's the extent of it.

15 Q. And when you joined Max Specialty in October
16 of 2007, what was your job?

17 A. I was an executive underwriter.

18 Q. For what types of policies?

19 A. Property only.

20 Q. Would that be primary and excess?

21 A. Yes.

22 Q. When did Max Specialty become incorporated, if
23 you will? When did they start?

24 A. They'd been in business for about a year
25 before I joined them.

1 Q. Sometime in 2006?

2 A. I'm not sure the exact date, but they've been
3 writing business for about a year before I joined.

4 Q. Where is Max Specialty located?

5 A. Our, our office here is -- the headquarters is
6 in Richmond, Virginia. Our parent company is in
7 Bermuda.

8 Q. Who is the parent company?

9 A. Alterra Capital, Bermuda.

10 Q. What did you do to prepare for this
11 deposition?

12 A. I read through the underwriting file,
13 refamiliarized myself with that, and I've had some
14 conversations with Larry.

15 Q. Mr. Bowles?

16 A. Mr. Bowles, yes, sir.

17 Q. All right. So you reviewed the underwriting
18 file?

19 A. Yes.

20 Q. Did that include any emails or correspondence
21 with anyone?

22 A. Yes, there are emails within the underwriting
23 file.

24 Q. From you?

25 A. Yes.

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1 A. No.

2 Q. Who do you report to?

3 A. I report to Jon Hahn. It's J-o-n. Last name
4 is H-a-h-n.

5 Q. And what is his job?

6 A. He is the vice-president and head of all
7 brokerage underwriting operations.

8 Q. Is he here in Richmond?

9 A. He is.

10 Q. Have you spoken to Mr. Hahn about this
11 lawsuit?

12 A. Only to inform him of where things stood and
13 to refer him to claims if there was something I couldn't
14 speak to.

15 Q. When you were placing -- sorry, when you were
16 underwriting this insurance with Signal, did you have to
17 seek any authority from anyone at Max Specialty to agree
18 to write the excess property insurance for Signal?

19 A. No.

20 Q. During the course of you agreeing to
21 underwrite the Signal excess property insurance, did you
22 talk to or deal with anyone inside of Max or did you do
23 it all on your own?

24 A. No, did it on my own.

25 Q. Max Specialties does not write marine

1 insurance, right?

2 A. We actually have a marine division.

3 Q. And where is that?

4 A. We have offices in New York, Atlanta, Dallas
5 and San Francisco.

6 Q. There's no marine division here in Richmond?

7 A. That's correct.

8 Q. So you yourself don't underwrite marine
9 insurance, do you?

10 A. Correct. We would refer that generally to our
11 marine division.

12 Q. I noticed in some correspondence that you were
13 a regional property manager for the Richmond territory;
14 is that correct?

15 A. That's correct.

16 Q. What does that mean?

17 A. I am the regional property manager for a
18 territory that's handled out of Richmond which would
19 encompass the Northeast from Charlotte, North Carolina
20 north, say west to Chicago.

21 Q. How is it that you as a underwriter came to
22 underwrite a shipyard that is located in Texas and
23 Mississippi?

24 A. The account came from a broker within our
25 territory, from a New York City broker. Territory's

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1 referred to where the business comes from, not where the
2 risk is located.

3 Q. Before Signal, had you ever underwritten a
4 shipyard on the Gulf Coast of the United States?

5 A. Yes.

6 Q. Which ones and where?

7 A. Bollinger Shipyards, I believe they had
8 operations in Mobile and Pascagoula and also -- well,
9 that was it on the Gulf Coast.

10 Q. You were the underwriter for Bollinger?

11 A. Correct.

12 Q. And it's your testimony that they have
13 shipyards in Pascagoula and Mobile?

14 A. I can't be certain where their shipyards are
15 located. They were on the Gulf Coast.

16 Q. Have you ever been to Bollinger?

17 A. No.

18 Q. Have you ever been to Signal?

19 A. No.

20 Q. Has anyone from Max Specialty ever been to
21 Signal shipyards in Texas or Mississippi?

22 A. No.

23 Q. Has anyone from Max Specialty ever requested
24 to inspect or go see Signal's shipyards in Mississippi
25 or Texas?

1 A. No.

2 Q. Even after the AFDB-5 sank, no one from
3 Max Specialty went to Texas to Signal Shipyard; is that
4 correct?

5 A. That's correct.

6 Q. Now, at Max Specialty, you were the only
7 person that dealt with AmWINS in the underwriting of the
8 Signal account?

9 A. Yes.

10 Q. Cody Whittington didn't have anything to do
11 with underwriting the Signal account, did he?

12 A. No, he did not.

13 Q. And you didn't seek any input from him during
14 the process of you underwriting the Signal account, did
15 you?

16 A. No, I did not.

17 Q. What about Mr. Boesen?

18 A. No.

19 Q. Is that -- he didn't have any involvement with
20 underwriting the Signal account, did he?

21 A. No, he did not.

22 Q. To your knowledge, is the first time Cody
23 Whittington became involved with the Signal account in
24 any way was after the AFDB-5 sank in August of 2009?

25 A. Yes.

1 Systems involved with?

2 A. Marine repair, marine fabrication.

3 Q. Vessels?

4 A. Yes.

5 Q. Not rigs, correct?

6 A. Correct.

7 Q. Do you know if Bollinger is involved with the
8 repair or refurbishment of offshore drilling rigs?

9 A. I'm not sure.

10 Q. Prior to underwriting the Signal account in
11 January of 2009, had you personally ever been involved
12 with the underwriting of an account for property
13 insurance that includes drydocks?

14 A. Yes.

15 Q. Which ones?

16 A. I can't give you specific instances, but as an
17 underwriter, I've seen numerous port facilities. Port
18 of Tampa I've reviewed before, but I can't give you
19 specific instances.

20 Q. Do you know what a drydock is?

21 A. Yes.

22 Q. What is it?

23 A. It's a floating dock used to lift items up out
24 of the water for repair.

25 Q. Now, in this case, you at Max agreed to write

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1 an excess property insurance policy for Signal; is that
2 right?

3 A. That's right.

4 Q. Now, when you as an underwriter are looking at
5 an excess policy, do you have a different process for
6 underwriting than you do when you're looking at a
7 primary policy?

8 A. I would say we look at a few additional
9 things. The same -- the fundamentals are the same, but
10 there are other things you would take into consideration
11 on the excess side.

12 Q. What where the fundamentals?

13 A. Construction type, occupancy, protections in
14 place and the exposures. The loss history.

15 Q. At Max Specialty, these fundamentals that you
16 just described to me, are these in writing somewhere at
17 Max Specialty?

18 A. No. . .

19 Q. Does Max Specialty have any written
20 underwriting guidelines?

21 A. No.

22 Q. These fundamentals that you described, are
23 they your personal fundamentals?

24 A. They are the fundamentals that most property
25 underwriters learn when they start in the business.

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1 Q. Inside of Max, is there any system of checking
2 or approving a risk before it is underwritten?

3 A. I'm not sure I understand the question.

4 Q. For example, in the Signal excess property
5 insurance, did anyone check your decision to underwrite
6 the excess policy before it was underwritten?

7 A. No.

8 Q. Has anyone ever reviewed it after the fact?

9 A. No.

10 Q. Now, these fundamentals that you talked about,
11 are these questions you normally ask a broker when they
12 present a risk to you?

13 A. If we have any questions that weren't answered
14 by the information provided.

15 Q. In your career at Max Specialty, have you ever
16 requested to inspect a property before you decided to
17 underwrite it?

18 A. Never before.

19 Q. Have you ever requested to interview the
20 prospective insured before you underwrote the risk?

21 A. No.

22 Q. Have you ever requested surveys or anything
23 like that of an insured's property before you underwrote
24 the property?

25 A. I don't recall a time when I have.

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1 Q. You could have done that, right?

2 A. Yes. We relied upon what we were provided by
3 Signal.

4 Q. And with values, you want the most current
5 value, right?

6 A. Correct.

7 Q. You don't want values that are old or
8 obsolete, do you?

9 A. No.

10 Q. Is that right?

11 A. That's right.

12 Q. When did you first hear of Signal
13 International?

14 A. When Tom Cesare presented me with the
15 submission.

16 Q. In January of 2009?

17 A. That's correct.

18 Q. Before January of 2009, had you ever heard of
19 Signal International?

20 A. If we had received a previous submission on
21 it, I don't recall it.

22 Q. Do you know what Signal International, do you
23 know what they do?

24 A. Yes.

25 Q. What do they do?

1 A. They do marine fabrication, repair of drilling
2 equipment, rigs, construction and repair, marine
3 fabrication.

4 Q. And where are they located?

5 A. They have operations in Pascagoula, Orange,
6 Port Arthur.

7 Q. Have you ever to this day spoken to anyone
8 from Signal International?

9 A. No.

10 Q. When you were, in January of 2009 when you
11 were underwriting the account, did you know how many
12 buildings they had on those respective properties in
13 Texas and Mississippi?

14 A. We were presented with a spreadsheet, with an
15 Excel spreadsheet that had a breakdown of values on it.

16 Q. And did you review that?

17 A. I did.

18 Q. Do you know who Signal's customers are?

19 A. Not by name.

20 Q. Do you know by type?

21 A. Yes.

22 Q. What type of customers does Signal have?

23 A. The oil, the oil industry, I believe some Navy
24 contracts.

25 Q. When you say "oil industry," what do you mean

1 A. No.

2 Q. Do you know if any of those companies that
3 I've just listed have anything to do with Signal?

4 A. I don't.

5 Q. During the course of underwriting the Signal
6 insurance excess property policy, is the only person
7 with whom you dealt Tom Cesare?

8 A. Yes.

9 Q. Did you deal with anyone from Willis?

10 A. No.

11 Q. And you didn't speak to anyone from Ace; is
12 that correct?

13 A. That's correct.

14 Q. When I say "Ace," is -- we've also seen the
15 name Westchester.

16 Is that the same thing to you?

17 A. That's the same thing.

18 Q. And you spoke to no one from Ace or
19 Westchester during the course of you deciding and
20 agreeing to underwrite the excess policy for Signal.

21 A. That's correct.

22 Q. Do you know when Signal International came
23 into existence?

24 A. I do not.

25 Q. During the course of you deciding to

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1 was provided to us by Signal and gave a favorable
2 overview and listed no recommendations.

3 Q. Okay. But what I'm asking is what you did.

4 When you looked at the statement of values in
5 the list of property, did you ask Mr. Cesare about the
6 condition, the value, et cetera of any of the property?

7 A. No.

8 Q. When you were deciding -- let me back up a
9 second.

10 The entire process of you being called by
11 Mr. Cesare about Signal, or being emailed by him, until
12 the time you decided to underwrite it was two days,
13 correct?

14 A. Correct.

15 Q. And during that two-day period, did you make
16 any attempt to look at Signal's financials?

17 A. No.

18 Q. Did you make any attempt to look at their
19 revenue?

20 A. No.

21 Q. Did you make any attempt to look at their
22 revenue from the utilization of the drydock?

23 A. No. I looked at the business interruption
24 values that were provided in the submission.

25 Q. Did you make any attempt to ascertain the, on

1 your own, the actual cash value of any of the property
2 listed?

3 A. No.

4 Q. Before Mr. Cesare contacted you in January of
5 2009, did you know him?

6 A. Yes.

7 Q. How long have you known him?

8 A. I've probably known Mr. Cesare for 15 years.

9 Q. 15?

10 A. I can't put an exact, but probably 15.

11 Q. Is he a broker with whom you've done business
12 before?

13 A. Yes.

14 Q. Over those 15 years?

15 A. Yes.

16 Q. Is that how you know him? Professionally?

17 A. Yes.

18 Q. Have you met him personally before?

19 A. Yes.

20 Q. Is he a social friend of yours?

21 A. No.

22 Q. Do you view him as a competent broker?

23 A. Yes.

24 Q. What is AmWINS?

25 A. AmWINS is a wholesale broker. They are an

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1 intermediary between retail brokers and surplus lines
2 carriers.

3 Q. In this case here, the retail broker was who?

4 A. Willis.

5 Q. Which office?

6 A. Mobile, I believe.

7 Q. Do you know anybody at Willis Mobile?

8 A. No.

9 Q. At AmWINS, what is Mr. Cesare's job?

10 A. I believe he's the property manager in the
11 New York office.

12 Q. And does he typically come to -- has he
13 typically come to you for certain accounts for property
14 insurance?

15 A. Yes.

16 Q. Both excess and primary?

17 A. Yes.

18 Q. Do you believe that Mr. Cesare is an
19 experienced and reputable broker?

20 A. Yes.

21 Q. Do you believe him to be honest?

22 A. Yes.

23 Q. Other than Mr. Cesare, did you have any
24 contact with anyone at AmWINS in placing the excess
25 property insurance for Signal?

1 A. No.

2 Q. All of the information that you received on
3 Signal's account came from AmWINS; is that correct?

4 A. That's correct.

5 Q. Did Mr. Cesare make any misrepresentations to
6 you when placing Signal's excess insurance policy?

7 A. Not that I know of. It appeared to me he
8 provided all the inform- -- he provided the information
9 that was provided to him by Willis.

10 Q. And when you were provided that information
11 from Mr. Cesare, did you believe at that time in January
12 of 2009 that the information was complete?

13 A. It appeared to be a complete submission.

14 Q. Did you have all the information that you
15 needed to decide to underwrite the Signal excess
16 insurance policy?

17 A. Yes.

18 Q. Yes?

19 A. Yes.

20 Q. Have you dealt with Willis of Mobile before?

21 A. No.

22 Q. Have you dealt with Willis before?

23 A. No.

24 Q. Do you know John Bullock?

25 A. No.

1 (Grouping of documents headed by email chain
2 dated January 28, 2009 from Krause to Daniel was marked
3 Deposition Exhibit Number 196.)

4 BY MR. BLAND:

5 Q. Exhibit 196, for the record, starts with an
6 email chain Tom Cesare email dated January 28, 2009, and
7 at the top there's a January 28, 2009 email from Tom
8 Krause to John Daniel with a CC to Trip Morano.

9 And then attached to it is Westchester's
10 \$10 million quote from the previous year, the Willis
11 2009 property submission, the current 2009 statement of
12 values, an RMS workbook and the Heller inspection report
13 that you referred to earlier; is that correct,
14 Mr. Morano?

15 A. That's correct.

16 Q. In front of you, Exhibit 196 is what you
17 received from Mr. Morano in January of 2009; is that
18 correct?

19 A. It's what we received from Mr. Cesare.

20 Q. I'm sorry.

21 Make it clear for the record. Exhibit 196 is
22 what you received from Mr. Cesare on January 28, 2009;
23 is that correct?

24 A. That's correct.

25 MR. NICOLETTI: David, just so we can be clear

1 And then there's an unnumbered page RMS
2 Construction Codes & Description and then another
3 series of pages numbering six, and that completes
4 the exhibit, I believe.

5 MR. BLAND: It does.

6 MR. NICOLETTI: Okay.

7 BY MR. BLAND:

8 Q. Now, if you look at the email in front of you,
9 the one that's the first email, January 28, 2009,
10 10:56 a.m.

11 Do you see that?

12 A. Um-hum.

13 THE COURT REPORTER: Yes?

14 BY MR. BLAND:

15 Q. Yes?

16 A. Yes.

17 Q. It says from Tom Cesare to Tom Cesare.

18 This is an email you received, isn't it?

19 A. I'm not sure I received it or was
20 carbon-copied in from Tom Krause, but ultimately it
21 landed in my hands that morning.

22 Q. All right. That morning of January 28th,
23 2009?

24 A. January 28th, 2009.

25 Q. And Exhibit 196 is the complete information

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1 that you received from AmWINS for the Signal account; is
2 that correct?

3 A. That's correct.

4 Q. Now, the email says from Cesare, it says, "We
5 have a short fuse 1/30/09 account that we have some
6 history on."

7 Do you recall reading this email --

8 A. Yes.

9 Q. -- back then?

10 A. Yes.

11 Q. So the short fuse meant that the account was
12 expiring in two days; is that right?

13 A. That's right.

14 Q. Is that something that's typical in your
15 industry, that you will get an account to quote on at
16 the last minute?

17 A. That is very common.

18 Q. This was not an uncommon situation for you to
19 be in, receiving an account with just two days; is that
20 correct?

21 A. That's correct.

22 Q. Did you believe that two days was enough time
23 for you to evaluate the risk and place it?

24 A. Based on the information that Tom provided,
25 yes, it appeared we had enough information.

1 Q. And this package of materials, Exhibit 196, is
2 a typical package that you would receive in deciding to
3 underwrite an excess insurance property policy, correct?

4 A. Correct.

5 Q. The Exhibit 196 was enough for you to go
6 through the fundamentals that you described to me
7 earlier; is that correct?

8 A. That's correct.

9 Q. And, in fact, Mr. Cesare's submission to you,
10 Exhibit 196, covered all the fundamentals that you
11 typically look at, correct?

12 A. That's correct.

13 Q. And certainly no one coerced or forced you to
14 write the Signal account, right?

15 A. That's correct.

16 Q. And then Mr. Cesare in his email gives a
17 history, a short history, of the account back to
18 January 30th, '07; is that right?

19 A. That's right.

20 Q. Do you know who Lexington is?

21 A. Yes.

22 Q. Who were they?

23 A. It's Lexington Insurance Company, AIG company.

24 Q. That's a very large insurance company, isn't
25 it?

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1 Q. Does he sit in Richmond?

2 A. He does.

3 Q. And is he someone with whom you work?

4 A. Yes.

5 Q. Is he senior to you as a regional underwriter?

6 A. He is senior to me, yes.

7 Q. You don't report to him, though. You report
8 to Mr. Hahn?

9 A. That's correct.

10 Q. Does Mr. Krause report to Mr. Hahn?

11 A. Yes.

12 Q. Who is John Daniel?

13 A. John Daniel is one of our underwriting
14 assistants.

15 Q. In Richmond?

16 A. Yes.

17 Q. Does Mr. Daniel work with you?

18 A. Yes, he does.

19 Q. Does he assist you?

20 A. Yes.

21 Q. And then you're CCed on this email; is that
22 right?

23 A. That's right.

24 Q. And was it around this time at 11:24 a.m. that
25 you received a package from Mr. Cesare as Exhibit 196?

1 A. Yes.

2 Q. From that point forward, from January 28th,
3 2009 at 11:24 a.m., was it you at Max Specialty that
4 handled the underwriting of the Signal excess insurance
5 policy?

6 A. Yes.

7 Q. Neither Mr. Krause nor Mr. Daniel had any role
8 in that; is that right?

9 A. That's right.

10 Q. Now, can you tell us here today whether you
11 read -- I know you do not use the RMS workbook, but
12 other than that, did you read all of the documents that
13 are a part of Exhibit 196 before you decided to
14 underwrite the policy?

15 A. Yes.

16 Q. Every page.

17 A. I went through it. I can't say I read every
18 page completely thoroughly, but I went through it and
19 found what I felt was the pertinent information.

20 Q. Based on your experience, you knew what to
21 look for, and you looked for that and you were
22 satisfied; is that right?

23 A. That's right.

24 Q. Now, have a look at the property insurance
25 submission which is -- begins with TRIPM 0056.

1 A. Yes.

2 Q. From that point forward, from January 28th,
3 2009 at 11:24 a.m., was it you at Max Specialty that
4 handled the underwriting of the Signal excess insurance
5 policy?

6 A. Yes.

7 Q. Neither Mr. Krause nor Mr. Daniel had any role
8 in that; is that right?

9 A. That's right.

10 Q. Now, can you tell us here today whether you
11 read -- I know you do not use the RMS workbook, but
12 other than that, did you read all of the documents that
13 are a part of Exhibit 196 before you decided to
14 underwrite the policy?

15 A. Yes.

16 Q. Every page.

17 A. I went through it. I can't say I read every
18 page completely thoroughly, but I went through it and
19 found what I felt was the pertinent information.

20 Q. Based on your experience, you knew what to
21 look for, and you looked for that and you were
22 satisfied; is that right?

23 A. That's right.

24 Q. Now, have a look at the property insurance
25 submission which is -- begins with TRIPM 0056.

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1 And this is a document effective January 30th,
2 2009 to January 30, 2010, meaning that's when the policy
3 period would be, right?

4 A. That's correct.

5 Q. The issue date on this at the top there is
6 January 14th, 2009; is that correct?

7 A. That's correct.

8 Q. And it was presented by Willis of Alabama,
9 Inc., Mobile; is that right?

10 A. That's right.

11 Q. If you turn to the Bates stamp page
12 TRIPM 0058.

13 A. Okay.

14 Q. There was some general information listed
15 there about Signal International; is that correct?

16 A. That's correct.

17 Q. And within that, they -- you were provided
18 with a financial contact Chris Cunningham and his phone
19 number; is that right?

20 A. That's correct.

21 Q. Do you know why a financial contact would be
22 listed?

23 A. I don't.

24 Q. Then there's an inspection contact, Lisa
25 Spears, and it says "same," meaning the same number,

1 A. But at the time, no.

2 Q. All right. Show me in Exhibit 196 what is
3 inaccurate.

4 A. Only that the condition of the properties may
5 not have been, you know, as above average as presented
6 in the survey.

7 Q. Okay. I'm coming back to my earlier question.

8 Show me in that exhibit, all those
9 attachments, where there's an inaccurate description of
10 the AFDB-5. Show me.

11 A. I can't tell you where that is. I don't, I
12 don't know that it's in there. I don't recall seeing
13 it.

14 MR. NICOLETTI: We can take 10 minutes while I
15 get coffee so we can look through each page, and I
16 think we should.

17 BY MR. BLAND:

18 Q. What I'd like you to do, because it's the
19 basis of your fraud claim against my client, is I want
20 you to look at Exhibit 196 -- let me back up.

21 You say that at the time of the placement of
22 this insurance, Signal International, my client, made
23 misrepresentations, committed fraud and had material
24 nondisclosures, okay?

25 It was -- Exhibit 196 is the only exhibit,

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1 documents, that you looked at and relied on in
2 underwriting the policy, right?

3 A. Yes.

4 Q. All right. So what I want you to do is tell
5 me where in that submission, Exhibit 196, there is a
6 misrepresentation, a fraudulent statement or a material,
7 underline "material," nondisclosure. I want you to tell
8 me where that is.

9 A. I don't know where that is. I don't know that
10 it's in there.

11 Q. You don't know whether there was any
12 misrepresentation.

13 A. All I know is that Signal had other reports in
14 their possession that spoke to the less than
15 seaworthiness, the danger of using that equipment for
16 repair work on large rigs, and we were not presented
17 that material.

18 Q. I'm going to ask you all about that, believe
19 me.

20 A. All right.

21 Q. But what I'm asking you is in 196, that
22 exhibit, the thing that you relied on, where is the
23 misrepresentation by Signal?

24 A. I don't know. I don't know that, that there
25 is a misrepresentation in this report.

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1 Q. What about with Mr. Heller? Do you have any
2 information that Signal concealed or did not disclose
3 information to Mr. Heller?

4 A. No.

5 Q. Or Heller & Associates?

6 A. No.

7 Q. In the underwriting process, the two days or
8 so that you looked at this before you wrote it, did you
9 ever speak with Mr. Cesare?

10 A. I can't recall. I believe we may have spoken
11 only in terms of, "Hey, Trip, this is Tom. I need this
12 like now," but we didn't, you know, we did not have any
13 conversations about underwriting or pricing.

14 Q. Since this lawsuit was filed, have you had any
15 discussions with Ace?

16 A. No.

17 Q. Do you know whether or not Ace is a party to
18 this lawsuit?

19 A. No, I do not.

20 Q. Do you know that Ace paid its limits as the
21 primary property underwriter?

22 A. Yes.

23 Q. Are you aware that they have not sued Signal
24 and allege that Signal committed fraud or had material
25 nondisclosure?

1 Q. All right. So I'm going to ask you this
2 question.

3 We looked at Exhibit 196, the package you
4 received from AmWINS.

5 Can you give us an estimate of how much time
6 you spent looking at those materials in Exhibit 196?

7 A. I spent the better part of the afternoon of
8 Wednesday, the 28th and the morning of the 29th looking
9 at it.

10 So probably a day.

11 Q. And you say, "I'm going to take a pass on the
12 layers outlined below at the current pricing level.

13 What did you mean by that?

14 A. At the suggested -- at Tom's suggested
15 pricing, the layers just did not make sense.

16 Q. By "pricing," what do you mean? The premium
17 paid?

18 A. The premium available for those layers,
19 correct, just did not make sense, given the loss
20 experience.

21 Q. And you say, "I'd probably want at least
22 200,000 per mil in any of the low attaching layers
23 (doesn't loss rate or work out well on a payback
24 basis)," exclamation point.

25 What did you mean by that?

1 (Email dated January 29, 2009 from Cesare to
2 Morano was marked Deposition Exhibit Number 199.)

3 BY MR. BLAND:

4 Q. This is an email from Mr. Cesare to you,
5 Thursday, January 29 at 11:31 a.m. You see that?

6 A. Yes.

7 Q. Do you recall this?

8 A. Yes.

9 Q. And they are referencing the -- apparently
10 attached is Westchester's 10 million primary quote; is
11 that right?

12 A. That's right.

13 Q. Is that something you took into consideration
14 when writing this policy?

15 A. Yes.

16 Q. And then it says, "The Westchester underwriter
17 (who has an engineering degree) has read the whole
18 inspection report that we included in the submission and
19 has pointed out that most of Ike loss was to the
20 electrical equipment at Orange, Texas yards." Do you
21 see that?

22 A. Yes.

23 Q. Do you know who he's referencing there, the
24 Westchester underwriter who has an engineering degree?

25 A. I know who he is, I know his name, but I don't

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1 know him.

2 Q. What's his name?

3 A. Darrell Pippin.

4 Q. And in this email, what is Mr. Cesare asking
5 you to do?

6 A. Asking us to take another look at providing
7 some catastrophe limits based on the fact that -- you
8 know, he's being a broker -- based on the fact that the
9 Ace underwriter still likes it, you know, the fact that
10 they've tried to make some improvements to avoid salt
11 water intrusion to their electrical equipment and storm
12 surge. He's just trying to convince us to have another
13 look at providing catastrophe perils.

14 Q. This email is mainly about the catastrophe
15 peril?

16 A. Yes.

17 Q. And after receiving this email, did you
18 request any further information about Signal or from
19 Signal?

20 A. No.

21 (Email Chain dated January 29, 2009 from
22 Morano to Cesare was marked Deposition Exhibit
23 Number 200.)

24 BY MR. BLAND:

25 Q. The next exhibit we've marked as Morano 200 is

1 Q. And Miss Everett on behalf of Arch had this
2 for just an hour or two and decided to go 50 percent on
3 the 15 million?

4 A. She -- yes.

5 Q. Is that typical in your business as well?

6 A. Yes.

7 Q. So she couldn't have looked at the AmWINS
8 submission in any detail, right?

9 A. I think she looked at it the night before.
10 After, after dinner, I think she -- she told me she was
11 going to look at it and have me an answer in the
12 morning.

13 Q. And by the next morning by 8:50 a.m., you had
14 heard from her, and she'd agreed to take on 50 percent
15 of the excess; is that right?

16 A. That's right, somewhere around 8:30 the next
17 morning she sent me an email saying she was good to go
18 with the capacity and the price.

19 Q. And then Mr. Cesare in the email chain
20 responded to you five minutes later at 8:56 a.m. and
21 says, "Thanks. Get me the quote first so that my broker
22 can present it and get a formal okay to bind." Do you
23 see that?

24 A. Yes.

25 Q. What's the quote?

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1 A. That is our formal quote document which is a
2 two-page document with all the formal terms and
3 conditions on it.

4 Q. And then you came back at 9:15 a.m., this is
5 on TRIPM 0027, and you say, "Attached is the formal
6 quote for the 15 million excess 10 million nonCAT layer.
7 Please review and let me know if you see anything that
8 needs attention. Hope this does the trick. Hope we can
9 bind this one up," exclamation point. That's what you
10 wrote?

11 A. Correct.

12 Q. And the formal quote that you attached begins
13 in this Exhibit 201 at TRIPM 0031; is that right?

14 A. That's right.

15 Q. And it's a two-page quote, as you described
16 it. It's TRIPM 0031 to 32; is that right?

17 A. That's right.

18 Q. And this is an excess proposal dated
19 January 30th, 2009 on Max Specialty paper; is that
20 right?

21 A. That's right.

22 Q. And that is sent to Tom Cesare at AmWINS?

23 A. That's right.

24 Q. That's the normal course of business, you deal
25 with the wholesale broker?

1 A. Yes, it is.

2 Q. And would Mr. Cesare then turn that down --
3 send this down to Willis?

4 A. That's correct.

5 Q. Who would then, in your experience, get
6 authority from Signal?

7 A. That's correct.

8 Q. The insured?

9 A. Correct.

10 Q. And this excess proposal as it describes as
11 covered property includes drydocks; is that right?

12 A. That's right.

13 Q. And the premium was how much?

14 A. It was a hundred thousand originally. At some
15 point Tom did come back to me and we amended it downward
16 at lower commission because Willis worked on a fee.

17 But the net number remained unchanged, I
18 believe.

19 Q. In the excess proposal at page -- at
20 TRIPM 0031, it says, "Policy form: Max Specialty excess
21 of loss following form." What does that mean?

22 A. That is our excess following form that in a
23 nutshell says we follow the terms and conditions of the
24 underlying policy.

25 Q. Of the primary policy?

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1 A. Of the primary policy.

2 Q. Do you follow the decisions of the primary
3 insurance?

4 A. We follow the terms and conditions of their
5 policy, not necessarily their decisions.

6 Q. Is a decision by the primary underwriter under
7 this excess following form, is it binding on you as the
8 excess?

9 A. No.

10 Q. Are you sure of that?

11 A. We, we reserve the right to adjust our own
12 claims. It simply means we follow the terms and
13 conditions of their policy.

14 Q. TRIPM 0032, "Standard Conditions." Do you see
15 that?

16 A. Yes.

17 Q. You're familiar -- this is a form of
18 Max Specialty's, correct?

19 A. Right. That's standard wording.

20 Q. And on number 3, it says, "This quote is
21 conditional upon favorable financials, inspection
22 report(s) and compliance with recommendations, if
23 requested." Is that right?

24 A. That's right.

25 Q. And as you've already told me, you didn't

1 MR. NICOLETTI: David, could you just clarify
2 whether it's quota share or excess of loss?

3 BY MR. BLAND:

4 Q. Do you know the difference?

5 A. Yes. It was quota share.

6 MR. BLAND: Thank you.

7 MR. GALATI: Can I take a two-minute break
8 while you're getting documents together?

9 MR. BLAND: Yeah. Can we take a little break?
10 Is that okay?

11 THE DEPONENT: Sure.

12 (A recess was taken from 12:14 p.m. until
13 12:26 p.m.)

14 BY MR. BLAND:

15 Q. I'm going to show you a document which you may
16 not have seen before. I'm going to mark it as
17 Exhibit 202.

18 (Email dated January 27, 2009 from Cesare to
19 Pippin was marked Deposition Exhibit Number 202.)

20 BY MR. BLAND:

21 Q. This is an email, it's dated January 27, 2009
22 from Mr. Cesare to Darrell Pippin, and I take it -- have
23 you ever seen that email before?

24 A. No, I never have.

25 Q. Okay. Do you understand who Mr. Pippin is?

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1 A. Yes.

2 Q. Is he the Ace underwriter?

3 A. Yes, he was at the time.

4 Q. And this is, apparently if you just look at
5 it, this is Mr. Cesare broking, if you will, the primary
6 policy, isn't it?

7 A. Correct.

8 Q. The renewal?

9 A. Yes.

10 Q. And if you just look at it from the
11 submission, in the middle of the page there, it says,
12 "In any event, we are enclosing," and he lists documents
13 A through E, the Westchester 10 million quote, the
14 Willis' 2009 property submission, the current 2009
15 statement of values and RMS workbook, "that should be
16 helpful to your modelers and the most recent inspection
17 report. Do you see that?

18 A. Yes.

19 Q. That's the very same list that was provided to
20 you the very next day on January 2009 -- sorry,
21 January 28th, 2009; is that correct?

22 A. That's correct.

23 Q. And do you know whether or not Ace had any
24 other documentation in their possession when they
25 decided to renew the primary insurance policy up to

1 \$10 million?

2 A. I did not.

3 Q. Have a look now what has previously been
4 marked as Exhibit 104. This is 104.

5 And just if you could have a quick flip
6 through that and tell me what that is.

7 A. This is a copy of Max Specialty's 15 over 10
8 excess policy.

9 Q. This is the policy that you agreed to
10 underwrite on January 30th, 2009; is that correct?

11 A. That's correct.

12 Q. And in Exhibit 104 -- and we'll go by Willis
13 Bates stamp number on this -- it's the second page of
14 the exhibit, it's WILLIS 00697 is the Bates stamp, it's
15 the policy declarations. You see that, Mr. Morano?

16 A. Yes.

17 Q. And the coverage is for commercial property
18 excess of loss; is that right?

19 A. That's correct.

20 Q. This is not a marine insurance policy, is it?

21 A. That's correct.

22 Q. And the total value that the insured -- sorry,
23 start over.

24 At the box number 10, it says, "This premium
25 is based on," and then it says 2,011,328,279; is that

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1 right?

2 A. That's correct.

3 Q. I'm sorry, 200 million; is that right?

4 A. 211 million, yes.

5 Q. And what does that number reflect, that
6 \$211 million number?

7 A. That's the total insurable value shown on the
8 schedule of values that was submitted to us.

9 Q. Is it the insured value of all property that
10 you were writing excess for?

11 A. It would be the insured value. Were they to
12 buy full limits of 211 million of insurance limits, it
13 would be the full insured value.

14 But it's the total of all the values.

15 Q. The premium was based on that \$211 million
16 value, right?

17 A. That's correct.

18 Q. Now, earlier in your testimony, you referenced
19 something about, I think you used the word "seaworthy."
20 Do you remember that?

21 A. Yes.

22 Q. What does "seaworthy" mean to you?

23 A. Capable of staying afloat.

24 Q. Is the word "seaworthy" in this commercial
25 property excess of loss?

1 A. No.

2 Q. There is no warranty in this policy of
3 seaworthiness with respect to any of the scheduled
4 property; is that correct?

5 A. That's correct.

6 Q. The AFDB-5 is a covered asset or a scheduled
7 piece of property under this excess policy, Exhibit 104?

8 A. That's correct.

9 Q. If the AFDB-5 sank because of operator error,
10 this is an event or an occurrence that this
11 Max Specialty excess policy would cover, right?

12 A. Yes, yes.

13 Q. If there's negligence on the part of Signal
14 which causes the drydock to sink, that is what Signal
15 was attempting to insure in this policy, right?

16 A. I think they were attempting to insure against
17 an accident or event that causes damage to their
18 facilities.

19 Q. And maybe I didn't --

20 A. Yeah.

21 Q. I'm sorry, I asked the question in an improper
22 way.

23 This policy, Exhibit 104, covers the sinking
24 of the drydock which is caused by the negligence of
25 Signal, correct?

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1 A. Yes, that's correct.

2 Q. And it covers the physical loss of the
3 drydock?

4 A. That's correct.

5 Q. And it would cover any business interruption
6 that may be attendant to the loss of the drydock,
7 correct?

8 A. Correct.

9 Q. And in this case, do you have any information
10 that the drydock, the AFDB-5, sank for any other reason
11 other than operator error?

12 A. In speaking with Mr. Bowles and our claims
13 staff, there's been discussions concerning the condition
14 of the drydock and the fact that it was in disrepair
15 that led to it sinking, but that's, but that's all --

16 Q. Trust me on this one. I know what Mr. Bowles
17 says about it, okay?

18 A. Okay.

19 Q. But I'm asking you.

20 Do you have any information that the drydock
21 sank for any other reason other than operator error?

22 A. I do not have that information.

23 Q. Does Max Specialty have that?

24 A. I do not know. That would be a question
25 better suited for Cody and Steve.

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1 coverages that were going to be provided.

2 Q. So when you were writing your excess policy,
3 you had an understanding that the Ace/Westchester policy
4 did have a broader scope of coverage than those areas
5 outlined in Mr. Cesare's email; is that correct?

6 A. I knew that -- yes, I knew that there were
7 going to be more coverages covered under the Ace policy
8 than were discussed in Tom Cesare's very brief email to
9 me, yes.

10 Q. Does there ever come a time when you receive a
11 copy of the Westchester primary policy prior to your
12 placement of binding of the coverage?

13 A. No.

14 Q. Did there ever come a time when you received a
15 copy of the Westchester primary property policy between
16 the time you bound it up until the time you issued your
17 own policy?

18 A. That could be. We typically ask for a copy of
19 the underlying policy so that we can review it and issue
20 our own excess policy.

21 Q. Would you only issue your excess policy after
22 receiving an actual copy of the Westchester policy? The
23 primary policy.

24 A. Not all the time, no. If it's a carrier that
25 we write excess over all the time, often we will issue

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1 A. Yes.

2 Q. All right. Are you familiar with the term
3 "following form" in regards to someone who writes excess
4 property insurance?

5 A. Yes.

6 Q. What is your understanding of the term
7 "following form"?

8 A. It would mean that the excess policy would
9 follow the terms and conditions of the underlying
10 policy --

11 Q. All right.

12 A. -- with the exception of any mandatory company
13 endorsements that might be attached.

14 Q. When you use the term "except for the
15 company's mandatory endorsements which may be attached,"
16 are you referring to the primary underwriter or the
17 excess underwriter?

18 A. The excess underwriter.

19 Q. Meaning yourself.

20 A. Correct.

21 Q. And when you speak in terms of the mandatory
22 endorsements, were they, in fact, attached to the
23 Max Specialty policy which was issued to Signal?

24 A. Yes.

25 Q. Let me put before you -- I think you have a

1 copy of Exhibit 104 and Exhibit 120.

2 MR. BOWLES: Do we have 120?

3 MR. NICOLETTI: Yes, it was early on.

4 (Discussion held off the record.)

5 MR. NICOLETTI: I'm sorry. Maybe you don't.

6 Not 120. My apologies. It's Exhibit 201.

7 MR. BLAND: Is that the Ace primary policy?

8 MR. NICOLETTI: No. I don't have the Ace
9 primary policy.

10 BY MR. NICOLETTI:

11 Q. Do you have 120 -- 201 in front of you, 201
12 and 104?

13 A. Got it.

14 Q. Trip, you and I will deal. Forget everyone
15 else. They are just confusing the both of us.

16 Let me first direct your attention to
17 Exhibit Morano 201.

18 Turn to the last several pages TRIPM 0031 and
19 32. Do you have them in front of you?

20 A. I do.

21 Q. Can you identify that two-page document for
22 me?

23 A. That is our original quote for the 15 excess
24 of 10 million layer.

25 Q. Now, I direct your attention to the middle

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1 where it says "Excess Proposal." Do you see that?

2 A. Yes.

3 Q. It says "Covered Property." Do you see that
4 line?

5 A. Yes.

6 Q. And after the covered property, there's a
7 colon, then the following words appear, "Buildings,
8 contents, bulkheads, drydocks equipment," comma.

9 Is that the type of physical property that you
10 intended to insure under the excess policy?

11 A. Yes.

12 Q. It goes on to also identify business income
13 and extra expense as per schedule of values.

14 Is that the additional or enhanced coverages
15 you intended to provide?

16 A. Yes.

17 Q. But they are more fully defined in the policy
18 form itself; is that correct?

19 A. That's right.

20 Q. Which form are you referring to, the
21 Max Specialty, primary or both?

22 A. The body of the Ace/Westchester form.

23 Q. Let me direct your attention to Exhibit 104,
24 specifically the first page entitled "Declarations." I
25 think it's a two-page document at WILLIS 00697 and 698.

1 Do you see those two pages?

2 A. Yes.

3 Q. And can you identify those two pages for me?

4 A. That is the declarations page to our policy.

5 Q. All right.

6 Now, I direct your attention to "Covered
7 Property." You see that?

8 A. I do.

9 Q. And it states after the colon, "Building,
10 contents, and business income."

11 Do you note that the word "drydock" is
12 missing?

13 A. I do.

14 Q. Was that an error on your part?

15 A. I don't think it was error as much as I have
16 been told that our system is incapable of actually
17 pulling it from -- that is the canned wording that comes
18 out of our system. It is not an error.

19 Our intention is to cover the covered property
20 that was on that quote letter.

21 Q. Okay. So the fact that the word "drydock" is
22 missing from the covered property is just a symptom of
23 your system not having the word "drydock" in it.

24 A. That's correct.

25 Q. So it was always your intent to have the word

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1 "drydock" next to "Covered Property."

2 A. That's correct.

3 Q. And, again, you have here, "Business income
4 with extra expenses as per schedule of values on file
5 with this company."

6 Did you intend to in any way limit the
7 additional or enhancements of coverages in the
8 Ace/Westchester policy by not specifically quoting the
9 same terms you have in your proposal?

10 A. No, no. I believe the policy was issued as --
11 with the same terms that was in our proposal.

12 Q. Okay. So if the declaration page has any
13 omissions in it, I should look back at the proposal?

14 A. Correct.

15 Q. Okay.

16 A. Correct.

17 Q. So there's nothing in this proposal that
18 should not be insured under the policy; is that correct?

19 A. That's correct.

20 Q. Now, let's turn to WILLIS 00699. It says
21 "Forms Endorsement" in the center.

22 A. Yes.

23 Q. See that page?

24 A. I do.

25 Q. "Forms Endorsement."

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1 privy to the discussions between our claims unit and
2 Arch Re's claims unit.

3 Q. So you don't know exactly what conversations
4 were had between the two, between your claims office and
5 the Arch reinsurance claims office; is that correct?

6 A. That's correct.

7 Q. Is there a claims control clause in the
8 facultative reinsurance contract?

9 A. Not that I'm aware of.

10 Q. Is there a strict following clause which,
11 which demands Arch follow Max Specialty in claims
12 decisions?

13 A. No, not that I'm aware of.

14 Q. Are you telling me then Arch had the
15 independent right to assess and pay this claim?

16 A. I'm not sure. That's --

17 MR. NICOLETTI: I think we'll have to call for
18 production of the facultative reinsurance contract.

19 MR. BOWLES: Has that been produced?

20 THE DEPONENT: It's been produced.

21 MR. NICOLETTI: It has?

22 MR. GUY: Yes.

23 MR. NICOLETTI: We have it.

24 BY MR. NICOLETTI:

25 Q. Without going through protracted discussions

1 of the Westchester primary policy, does the Westchester
2 policy provide coverage for Signal for debris removal?

3 A. Yes, there was a \$5 million sublimit for
4 debris removal in the Ace policy.

5 Q. All right. Did the Ace primary property
6 policy, the Westchester policy, also provide for
7 cleanup -- also provide coverage for Signal for cleanup
8 costs?

9 A. I believe, but I can't recall. I would have
10 to review the policy. But I believe it did. I believe
11 there was a sublimit for cleanup costs as well. I can't
12 remember.

13 Q. The policy speaks for itself. I can represent
14 to you it's in, it's in the Westchester policy.

15 And that has its own separate sublimit; isn't
16 that correct?

17 A. That's correct.

18 Q. Okay.

19 Now, can you tell me the difference between
20 debris removal and cleanup costs since there are two
21 separate coverages?

22 A. I associate cleanup costs more with a
23 pollution type of situation where you're cleaning up
24 land or water or something that's been contaminated
25 after a fire.

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1 The debris removal I associate with bulldozing
2 the manufacturing facility out of the way after a fire
3 to rebuild a new one, the actual hard -- the hard
4 debris.

5 Q. Okay. Let me approach it this way then.

6 If there is a pollution exclusion in a policy,
7 what's the purpose of the cleanup cost coverage? Good
8 question?

9 A. That's a good question.

10 Q. That's why I'm asking.

11 A. I don't know the answer to that question.

12 Q. Now, based upon your Max Specialty following
13 form, the Max Specialty excess policy would also provide
14 Signal with both debris removal and cleanup cost
15 coverages, isn't that correct?

16 A. My understanding is that the entire property
17 placement included a \$5 million sublimit for debris
18 removal.

19 Q. I didn't ask you about the limit. I was very
20 careful what I'm asking you.

21 My question to you is very simple. Did the
22 Max Specialty policy follow form in regards to the
23 Westchester primary property policy and provide Signal
24 with both debris removal and cleanup cost coverages?

25 A. We followed form to the Ace/Westchester

1 policy, but both of those coverages were sublimited
2 within the Ace/Westchester policy.

3 Q. I'm putting aside the limits for the moment.
4 I'll get to the limits.

5 Putting aside the limits, does the
6 Max Specialty provide coverage for both debris removal
7 and cleanup costs for Signal?

8 A. I don't think it does based on the fact that
9 the limits are contained within the primary policy.

10 Q. So what you're telling me then, because it's
11 sublimited in the primary policy, you don't cover it.

12 A. Correct.

13 Q. Okay. Where do you get that understanding
14 from?

15 A. I believe we would -- we could -- would
16 recognize it for -- that it could erode the underlying
17 insurance, but it would not be an additional coverage in
18 our excess policy.

19 Q. What's the basis for your saying that?

20 A. Just my understanding of the way 100 percent
21 program sublimits work.

22 Q. Can you direct my attention to anything in the
23 Max Specialty excess property policy which is before you
24 that tells the insured Signal that if it has sublimits
25 in its primary policy, that the Max Specialty policy

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1 does not provide coverage for that type of insured
2 issue?

3 A. I cannot direct you to anything in our policy,
4 but the sublimits in the Willis proposal are shown as
5 100 percent program sublimits.

6 MR. NICOLETTI: Can I have the Westchester
7 policy?

8 BY MR. NICOLETTI:

9 Q. I'm going to hand you the Westchester policy.

10 Can you direct my attention to the terms and
11 conditions to which you're referring?

12 MR. BOWLES: What is the exhibit number? 103.

13 THE DEPONENT: I'm looking on the page
14 numbered WILLIS 00738.

15 BY MR. NICOLETTI:

16 Q. Okay.

17 A. I'm looking about a third of the way down, the
18 \$5 million -- well, at the top of the page, it's
19 entitled "Schedule of 100 Percent Program Sublimits,"
20 and then about a third of the way down, 5 million for
21 debris removal and cost of cleanup.

22 Q. Is that the sole basis for your saying that
23 your Max Specialty excess policy does not provide debris
24 removal coverage?

25 A. Yes.

1 Q. Okay. Anything else in that policy that
2 supports your contention?

3 A. No. My contention is based upon what is --
4 appears to be a 100 percent program limit 5 million.

5 Q. Let me, let me understand this correctly then.

6 If you're telling the insured that they have a
7 sublimit in their primary policy, you provide no
8 coverage on the excess policy, if that's what you're
9 telling the insured, does that mean the insured then has
10 the right to allocate the primary limits so that it
11 could access the excess limits in what you call the
12 other covered areas?

13 A. That's my understanding.

14 Q. So if Signal would tell you today that it's
15 going to allocate \$5 million of the Ace primary policy
16 to debris removal, you would pay them \$5 million towards
17 the physical loss of the drydock.

18 A. I don't know. I can't answer that question.

19 Q. You're the underwriter. You're the only guy
20 that can.

21 A. That's not something I could answer or have
22 the authority to answer. That would have to go to --

23 Q. I'm not asking you whether you can give the
24 authority to do it now.

25 I'm asking you based upon your understanding

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1 of the policy --

2 A. Based --

3 Q. Based on your understanding of the policy and
4 the program as you described it, if Signal were to tell
5 you that they've allocated \$5 million of their primary
6 Ace payment to debris removal, that would move the
7 physical loss of damage claim into your layer for that
8 \$5 million; is that correct?

9 A. I think potentially could based on the erosion
10 of the underlying limits.

11 Q. Did anyone ever tell you that Mr. Whittington
12 and Mr. Cheglikov told Signal they could not apply the
13 \$5 million sublimit of the primary policy proceeds to
14 pay for debris removal?

15 A. No.

16 Q. If they did, in fact, write a letter or tell
17 Signal's representatives through oral statements that
18 they had no right to allocate \$5 million of the primary
19 payment to debris removal, would that not be, in fact, a
20 misrepresentation of the coverages?

21 A. I don't know.

22 Q. Well, you just told me that based upon your
23 understanding of the policy, Signal could allocate some
24 money towards the debris removal because it's sublimited
25 in the primary. Did you not tell me that?

1 A. That is purely my interpretation.

2 Q. Well, you're the underwriter.

3 A. That doesn't necessarily mean my
4 interpretation is the correct interpretation.

5 Q. In other words, you're telling me that the
6 claims person who has no participation in issuing the
7 policy and negotiating the terms can overrule your
8 intent?

9 MR. BOWLES: Objection.

10 THE DEPONENT: I can tell you that our claims
11 staff in all likelihood has more experience
12 interpreting policy language than I do.

13 BY MR. NICOLETTI:

14 Q. Was it your intent under this property program
15 to allow Signal to allocate the primary coverage
16 payments to any area it chose?

17 A. Under the "Priority of Payment" section, I do
18 believe that they can utilize the underlying limits for
19 coverages that were not covered in the excess.

20 Q. All right.

21 A. That's the way I read it.

22 Q. So to the extent that you don't believe you
23 have coverage under the excess policy for a particular
24 area of coverage which is covered under the primary
25 policy, Signal has the right to allocate those monies

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1 into that area on the primary level.

2 A. That's my interpretation of, of the coverage.

3 Q. As the underwriter, I'll accept it. Thank
4 you.

5 Let's continue.

6 By the way, do you have any underwriting
7 guidelines?

8 A. No, we do not.

9 Q. Do you have any, what I'll call, annotation of
10 your coverage forms where your company tells you or
11 advises you the scope of coverage of a particular term
12 that's in your policy forms?

13 A. No, we do not.

14 Q. Have you ever sat down with any broker or
15 insured prior to the loss and explained to them that if
16 you have a sublimit in your primary policy, that the
17 Max Specialty excess form does not provide that
18 coverage?

19 A. No.

20 Q. When was the first time that you came to the
21 understanding that if there was a sublimit in the
22 primary policy, property policy, that Max Specialty did
23 not provide coverage through its following form excess?

24 A. Would you mind repeating that question?

25 Q. When did you first come to the understanding

1 A. I mean, to me, that is the job of an insurance
2 agent to explain the coverages to the buyer, to the
3 ultimate buyer.

4 Q. And what particular phrase in the
5 Max Specialty policy alerts the broker so that he can
6 advise the innocent insured that if he has a sublimit on
7 a coverage in a primary property policy, the
8 Max Specialty following form endorsement does not
9 follow?

10 A. If I'm not mistaken, it's the Willis form that
11 provides the 100 percent program sublimits.

12 Q. I understand that.

13 A. In my mind, Willis should have explained that.

14 Q. No, no. They put a sublimit in their primary
15 property policy form, that's correct.

16 What's in the Max Specialty policy that tells
17 the broker to advise the innocent insured that if there
18 is a sublimit in that primary policy program, that the
19 Max Specialty following form excess policy does not
20 follow form?

21 A. There's no wording in our form.

22 Q. That's all I'm getting at.

23 So once again, how is Signal to understand
24 that despite no wording in the Max Specialty following
25 form excess contract that they have no excess coverage

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2 agent to explain the coverages to the buyer, to the
3 ultimate buyer.

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24 that despite no wording in the Max Specialty following
25 form excess contract that they have no excess coverage

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1 for debris removal and cleanup costs because of the
2 sublimit in the primary policy program when you yourself
3 admitted you never told their broker?

4 A. I believe their broker should have told them.

5 Q. You never told them your understanding of your
6 own policy. How is AmWINS supposed to understand it?

7 A. The body of the policy is a Willis form.

8 Q. I'm not talking about the primary. I'm
9 looking at your Max Specialty form.

10 What is in the Max Specialty form that tells
11 anybody it doesn't follow form if there's a sublimit in
12 the primary policy?

13 A. Nothing.

14 Q. And you never told AmWINS about that either,
15 did you?

16 A. No.

17 Q. And, again, the only thing that's in the
18 primary policy form which you say cuts off coverage to
19 the primary -- to the excess is the schedule of limits;
20 is that correct?

21 A. I believe so.

22 Q. Right.

23 You believe so.

24 A. I believe so.

25 Q. Yeah. It's a schedule of limits, isn't it?

1 A. Correct.

2 Q. Nowhere does it say that the excess policy
3 does not insure those areas, does it?

4 A. It says 100 percent program limits.

5 Q. Right.

6 A. To me, that means that's all the limit they
7 purchased for those particular coverages.

8 Q. And where is the definition of "program" in
9 any of these policies?

10 A. I don't know.

11 Q. So, again, it's your own understanding of the
12 term "program" which gives you the predicate to jump in
13 and say, "Because you have a sublimit in the limit
14 section, you get no coverage on your Max Specialty
15 following form." Is that correct?

16 A. That's correct.

17 Q. All right. So we've got no definition for
18 program, correct?

19 A. That's correct.

20 Q. There's nothing in the policy that says if you
21 have a program limit that's sublimitted in the primary,
22 that you don't get excess coverage. There's nothing in
23 the policy that says that, does it?

24 A. No. It says that in the event that the
25 primary is eroded by coverages not providing in, in the

1 A. No, it does not.

2 Q. All it says there's a limit in the primary
3 policy for 10 million.

4 A. But it shows a separate limit for debris
5 removal of 5 million.

6 Q. And am I correct that there's like 25
7 sublimits in the Ace/Westchester policy?

8 A. Yes.

9 Q. And you're telling me your following form
10 Max Specialty excess policy gives no coverage for those
11 25 areas.

12 A. That's correct. But would drop down in the
13 event that those sublimited coverages erode the primary.

14 Q. What do you mean it would drop down?

15 A. It would recognize that those coverages were
16 they paid out under the primary would bring us closer to
17 being primary, could erode the underlying limits. So
18 our attachment point would no longer be 10.

19 Q. Let me look in this direction.

20 So if the insured is foolish enough to
21 allocate into a full limits area and not allocate into
22 the sublimited areas, Westchester doesn't honor those
23 other areas and pay them.

24 A. I don't know. I can't speak to what
25 Westchester did or does.